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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,924	03/10/2004	Harold J. Goeking	2438/2505 (GP-03-2)	3258

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EXAMINER	
POLLICOFF, STEVEN B	

ART UNIT	PAPER NUMBER
3728	

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/796,924	GOEKING ET AL.	
	Examiner	Art Unit	
	Steven B. Pollicoff	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 March 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *10 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/25/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Saunders et al., (US Pat No 6,305,546).

With respect to claims 1 and 6, Saunders discloses a food storage container comprising a unitary base having a generally planar bottom portion and a sidewall extending generally upwardly therefrom (Saunders Fig 3 reference number 70), the sidewall of the base including base sealing means (reference numbers 74 and 76) for cooperating with a lid (reference number 72) to form a seal. Saunders also discloses a lid provided with a plurality of resettable bistable, eversible domed shaped indicator means (reference number 84 and 86; see also column 3, lines 9-10) at least in part integrally formed with the lid, a resealable vent (reference number 82) integrally formed in the lid, and lid sealing means (reference number 80 and 82) to form a closed container.

With respect to claim 2, Saunders discloses that the container (lid + base) may be made of any suitable plastic (column 1, lines 65-66). Therefore, the product-by-process limitation (injection molded base) results in no structure that is different from Saunders.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 3,5 and 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saunders et al., (US Pat No 6,305,546) as applied to claim 1 above and further in view of Ferretti et al., (US Pat No 6,938,768).

With respect to claims 3 and 5, Saunders does not disclose what materials the base and lid can be made of other than a suitable plastic. However, Ferretti discloses a reusable plastic container and the limitations of existing containers using a polypropylene resin (Ferretti column 2, lines 65-68 and column 3, lines 1-16). Ferretti also discloses that because of certain desired properties, the reusable plastic container should be made of a random ethylene/propylene copolymer (column 3, lines 17-18). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the material of the Saunders container to include a polypropylene

resin comprising a propylene/ethylene copolymer, as taught by Ferretti, for the purpose of having a container that possesses balanced stiffness and appropriate resistance to heat and cold (column 3, lines 42-53).

With respect to claims 7,8,10 and 11, Saunders does not disclose that the bistable, eversible domed portions are generally thinner (about 50% or less in thickness) at their junctions (peripheral portions) with adjacent portions of the lid than adjacent portions/areas of the lid. However, Ferretti discloses that the container lid has an average lid thickness of between 15-30 mils, a maximum thickness between the 15-32 mils and a minimum thickness of 8-25 mils (Ferretti column 10, lines 59-65). Ferretti also discloses that the buttons/resettable domed portions, including their platforms/generally planar portions, have wall sections below the average lid thickness. Based on these disclosures one can reasonably conclude that it would have been obvious to one of ordinary skill in the art at the time of the invention to have bistable, eversible domed portions generally thinner (about 50% or less in thickness) at their junctions (peripheral portions) with adjacent portions of the lid than adjacent portions/areas of the lid, as taught by Ferretti, for the purpose of increasing flexibility of the buttons for inversion (Ferretti column 11, lines 8-15).

With respect to claims 9 and 12, Saunders discloses that the resettable bistable, eversible domed portions have a generally planar central portion (Saunders Fig 3 reference number 86).

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saunders et al., (US Pat No 6,305,546) in view of Ferretti et al., (US Pat No 6,938,768) as applied to claims 1,2 and 3 above and further in view of Kawaguchi et al., (US Pat No 4,615,928).

With respect to claim 4, Saunders as modified above does not disclose that the polypropylene resin comprises isotactic polypropylene. However, Kawaguchi discloses a method of making a plastic container made of isotactic polypropylene (Kawaguchi column 7, lines 34-40). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the material of the Saunders container to include an isotactic polypropylene, as taught by Kawaguchi, for the purpose of making a commercially desirable container (column 1, lines 52-56).

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saunders et al., (US Pat No 6,305,546) as applied to claim 1 above and further in view of Rousselet (US Pat No 6,575,330).

With respect to claim 13, Saunders does not disclose that the resealable vent comprises a hinged vent panel integrally formed in the lid and secured to the lid at the lid's periphery. However, Rousselet discloses a hinged panel integrally formed in the lid and secured to the lid at the lid's periphery (Rousselet Fig 1 reference number 32). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the lid of Saunders to include an integrally formed hinged

panel at the periphery, as taught by Rousselet, for the purpose of creating a more convenient sealing means for the resealable vent.

With respect to claim 14, Saunders discloses that the resealable vent comprises a vent conduit integrally formed in the lid and extending therethrough (Saunders Fig 3, reference number 82). Saunders also discloses that the vent panel (reference number 74) includes a sealing element (reference number 78) integrally formed therewith adapted to seal the conduit.

Claims 15-17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saunders et al., (US Pat No 6,305,546) in view of Rousselet (US Pat No 6,575,330), as applied to claims 1,13 and 14 above, and further in view of Ogino (US Pat No 6,685,046).

With respect to claims 15-17, Saunders as modified above does not disclose that the sealing element includes terminal projections that are segmented closure elements and configured to provide an audible indication sealing or unsealing the vent. Saunders as modified above also does not disclose that the vent conduit and closure elements have sealing shoulders configured to engage each other to form a seal. However, Ogino discloses food container lid closure that includes a sealing element (Ogino Fig 8A reference number 33) including a sealing shoulder (reference number 37) and further having terminal projections that are segmented closure elements (Fig 8A reference numbers 35 and 55) and a vent conduit (Fig 9 reference number 19) having a sealing shoulder (Fig 8B reference number 39) as well. Therefore, it would have been

obvious to one of ordinary skill in the art at the time of the invention to replace the sealing element and vent conduit of Saunders as modified above to include an element having a sealing shoulder and terminal projections and to further include a conduit with a sealing shoulder, as taught by Ogino for the purpose of creating a seal that cuts off communication between the outside and inside of the container (column 1, lines 51-56). It should also be noted that such a seal that cuts off communication between the outside and inside and further creates a pressure difference, is capable of providing an audible indication when the seal is released because of the pressure release when the seal is opened.

Claims 18-21 and 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saunders et al., (US Pat No 6,305,546) as applied to claim 1 above and further in view of Diesterbeck (US Pat No 6,845,877).

With respect to claims 18, 27and 32, Saunders further discloses a unitary lid having a generally planar upper surface (Saunders Fig 3 generally at 72). Saunders does not disclose that the sidewall define an upper sidewall portion including a sealing notch, an inwardly projecting annular sealing protuberance and an inner notch wall, that the base further including a rim extending outwardly from the upper sidewall portion of the base and that the lid has a downwardly extending sealing band adapted to cooperate with the inwardly projecting annular sealing protuberance of the upper sidewall of the base to form an annular interference-fit seal. Saunders also does not disclose that the lid rim extending outwardly with respect to the sealing band has a downwardly projecting outer wall provided with an undercut on its lower edge extending

around the lid, the undercut being adapted to cooperate with the outer edge of the base rim to audibly indicate secure closure of the container. However, Diesterbeck discloses that the sidewall (Diesterbeck Fig 2 see portion below reference number 21) define an upper sidewall portion (see wall area between reference number 20 and open cavity 14) including a sealing notch (U-shaped opening between reference number 22 and the upper side wall's inner/left boundary), an inwardly projecting annular sealing protuberance (see where upper side wall bends left at reference number 35 and extends to the left boundary of the side wall portion) and an inner notch wall (reference number 22), that the base (Fig 1 reference number 3) further includes a rim (Fig 1 reference number 4) extending outwardly from the upper sidewall portion of the base and that the lid (Fig 1 reference number 2) has a downwardly extending sealing band (Fig 2 reference number 20) adapted to cooperate with the inwardly projecting annular sealing protuberance of the upper sidewall of the base to form an annular interference-fit seal (at reference number 35). Diesterbeck also discloses that the lid rim extending outwardly with respect to the sealing band has a downwardly projecting outer wall provided with an undercut (snap edge) on its lower edge extending around the lid (Fig 1 at reference number 7), the undercut being adapted to cooperate with the outer edge of the base rim to audibly indicate (snap fit pieces inherently possess audible indication means) secure closure of the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Saunders lid and base to include the elements listed above, as taught by Diesterbeck, for the purpose of

fulfilling demands imposed on leak-proofness, while simultaneously providing high load bearing capacity (column 1, lines 48-51).

With respect to claims 19 and 30, Saunders does not discloses that the sealing protuberance of the uppermost sidewall portion of the base is at least about 1.25 times the thickness of the adjacent sidewall portions of the base. However, Diesterbeck discloses that the sealing protuberance of the uppermost sidewall portion of the base is at least about 1.25 times the thickness (Diesterbeck Fig 2 it appears the protuberance from the bend at the upper side wall to the left boundary of the side wall is about 2 times the thickness) of the adjacent sidewall portions of the base. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Saunders base to include a sealing protuberance thicker than the adjacent side wall, as taught by Diesterbeck, for the purpose of ensuring high stability and high leak-proofness (column 10, lines 1-5). It should be noted that while Diesterbeck does not expressly state a motivation for maintaining a thicker sealing protuberance, the reference does reveal that it is advantageous to maintain thicker material at interference fits so as to provide more construction stability and better leak prevention of the seals.

With respect to claims 20,21 and 33, Diesterbeck discloses that the annular seal is continuous (in the sense that it is continuous around the perimeter of the lid; see column 8, line 60) and that the downwardly projecting wall of the lid rim (as well as the base rim) and the sealing band of the lid generally define an inverted U-shaped profile (Fig 2 generally).

With respect to claims 26 and 34, Diesterbeck discloses that the undercut on the lid rim cooperates with the outer edge of the base rim to form another leakage barrier (Fig 2 at reference number 6).

With respect to claims 28 and 29, Diesterbeck discloses that the downwardly extending inner notch wall includes a substantially vertical portion (Diesterbeck at reference number 22 generally) and that the protuberance has a substantially vertical portion (right boundary of side wall portion below reference number 21). Additionally, official notice is taken that it is old and conventional to provide a chamfered portion on a vertical wall for an easier fit with a mating component to sit adjacent to the vertical wall. Therefore, it would have been obvious to one of ordinary skill in the art to provide an upper chamfered portion to the inner notch wall which extends downwardly and outwardly for the purpose of allowing the sealing band to more easily fit within the notch between the inner notch wall and upper side wall when the lid and base are engaged with one another.

With respect to claim 31, it would have been an obvious matter of design choice to make the inner notch wall of the sealing notch thicker than the sidewall of the base immediately above the protuberance, since Applicant has not disclosed that thickening the inner notch wall solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with a inner notch wall of the thickness disclosed in Fig 2 of the Diesterbeck reference.

Claims 22-25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saunders et al., (US Pat No 6,305,546) and Diesterbeck (US Pat No 6,845,877) as applied to claim 1,18 and 21 above and further in view of Jiradejnunt et al (US Pat No 5,730,309).

With respect to claim 22, Saunders as modified above does not disclose that the lid further comprises a downwardly extending intermediate spacer projection between the sealing band and the downwardly projecting outer wall of the lid rim. However, Jiradejnunt discloses a seal ring/spacer (Jiradejnunt Fig 7 reference number 50) between a sealing band (reference number 40) and outer lid rim wall (at reference number 46). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the Saunders lid rim as modified above to include a seal ring/spacer between the sealing band and outer lid rim wall, as taught by Jiradejnunt, for the purpose of preventing further leakage from the container (column 3, lines 15-18).

With respect to claim 23, Saunders as modified above discloses that the rim of the base is an inverted U-shape (Fig 2 generally).

With respect to claim 24, Jiradejnunt discloses that the downwardly extending intermediate projection of the lid is capable of being configured to adjust the clearance of a downwardly projecting outer leg (Jiradejnunt Fig 7 at reference number 46) of the lid rim and a locking bead (inward protuberance at reference number 38) on the outer leg of the base rim to a clearance between about 0 and about 5% when the lid and base

are joined together since the purpose of such a configuration provides greater leak proofness than a configuration with a greater clearance.

With respect to claim 25, Saunders as modified above discloses that the inverted U-shape of the lid rim is sized to compress the inverted U-shape of the base rim to form a second interference-fit seal around at least a portion of the container when the lid and base are joined together (Diesterbeck Fig 2 at reference number 11).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Molo (US Pat No 5,363,978) discloses a container with a hinged vent panel and vent conduit. Wong (US Pat No 6,460,716) discloses a container with food seals including a lid with a sealing band and an undercut and a base with a sealing protuberance to form an interference fit with the sealing band.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SBP 3/31/06

SBP

JILA M. MOHANDESI
PRIMARY EXAMINER